

New Hampshire Department of Transportation  
Statewide DBE Goal Setting and Methodology for FY 2015-2017

**OVERALL GOAL (§ 26.45)**

Pursuant to the USDOT amendment effective March 5, 2010, the New Hampshire Department of Transportation (NHDOT) will submit to the Federal Highway Administration (FHWA) the DBE goal and methodology at three-year intervals. The first three-year submission will be submitted to FHWA by August 1, 2011, and at three-year intervals thereafter. The Department may make a mid-cycle adjustment to its DBE goal if circumstances that have a significant impact on the current stated goal are experienced. Any mid-cycle adjustment will not take effect until approved by the FHWA.

**GOAL**

NHDOT intends to expend **5.63** % of the amounts received under Titles I, III and V of the Transportation Equity Act for the 21st Century or any subsequently enacted Federal laws, with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of NHDOT that this expenditure is obtained to the extent practicable, through a race and gender-neutral program (see 49 CFR § 26.5 for definitions.)

**METHOD OF ATTAINMENT**

NHDOT will calculate the overall goal using the criteria based in 49 CFR § 26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally-assisted contracts, and reflect a level of participation expected in the absence of discrimination. The overall goal setting procedure is based on the following:

**STEP 1: BASE FIGURE**

Method Selected: The NHDOT uses an *Alternative Method*.

Description of Data Used: The data used in this calculation was obtained from two sources. The primary source is the NHDOT bidders list. This includes all bidders, successful and unsuccessful, prime and subcontractors, DBEs and non-DBEs which were seeking work on state and municipal FHWA-assisted transportation related construction contracts in the local market area during the period of January 1, 2013 through December 31, 2013. The secondary data source includes all ready, willing, and able firms, DBE and non-DBE, accepted by the NHDOT Consultant Selection Committee and eligible to participate in environmental, engineering and other FHWA-assisted consulting agreements in the local market area during the period of January 1, 2013 through December 31, 2013. The data collected resulted in a list of prime and subcontractors, DBE and non-DBE, which directly participated in, attempted to participate in, or were ready, willing, and able to participate in FHWA-assisted highway construction projects and environmental, engineering, and other FHWA-assisted consulting contracts.

The NHDOT is the sole certifying agency for the State of New Hampshire. The NHDOT Office of Federal Compliance (OFC) is responsible for reviewing prime and subcontractors prior to approval for project work. The OFC continuously reviews contractor information submitted during the bidding and approval process on all projects in an effort to identify minority and women-owned non-DBE firms for recruitment and possible DBE certification. The NHDOT works closely with the N.H. Procurement Technical Assistance Program, the Small Business Administration, the Association of General Contractors, and the National Association for Women in Construction to identify and recruit minority and women-owned firms for potential participation in the DBE program. In addition to these ongoing practices, the OFC has reviewed the ownership and control data from all primes and subcontractors submitting bids or quotes during calendar year 2013 to ascertain if potential DBEs exist for inclusion in the numerator of the base figure calculation. The NHDOT concluded no potential DBEs are present for inclusion in this report during the data collection period.

Collection of the Data To determine the relative availability of construction contractors, information was collected from the bidders list. The NHDOT, Office of Federal Compliance (OFC), maintains a bidders list in accordance with 49 CFR Part 26.11, which includes all DBE and non-DBE prime contractors that have submitted a bid or quote on any state or municipal FHWA-assisted transportation related construction project. The OFC sends a notice to each contractor, identifying each project for which they submitted a bid or quote and requires the contractor to provide the names of any subcontractors or material suppliers, (DBE and non-DBE), that may have submitted a bid or quote in support of their own proposal. The response rate for this inquiry is 85% and therefore considered reliable. The information is compiled using a spreadsheet to ensure that double counting is eliminated. This information is used for the purpose of establishing the portion of the base figure derived from FHWA-assisted construction contracts. The formula is detailed below.

Primes contractors that have submitted bids or quotes during 2013	39
Subcontractors that have submitted bids or quotes during 2013	346
Total of Primes and Subs that have submitted bids or quotes	385
DBE's that have submitted bids or quotes during 2013	18
DBE contractors (18)/All available construction contractors (385)	$18/385 = 4.68\%$

The majority of consultant agreements do not employ a standard low bid procedure. In an effort to ensure a complete accounting of possible DBE participation in the consulting process, the NHDOT will compare the total eligible DBE consultants against the total of all eligible consultants to arrive at a potential DBE participation figure absent of any discrimination.

DBE consultants (23)/All available consultants (164)	$23/164 = 14.02\%$
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Based on past participation of the construction and consultant contract awards of 97.1% construction contracts and 2.1% consultant contracts, the following calculations were performed to determine an appropriately weighted baseline goal:

Construction contracts:	$4.68\% \times .979 = 4.58\%$
<u>Consultant contracts:</u>	$14.02\% \times .021 = 0.29\%$
	4.87%

**OTHER CONSIDERATIONS WHEN CALCULATING THE BASE FIGURE:**

- A. Past participation: The use of past participation as a tool to establish the base figure is not appropriate because it may not be a reflection of the ready, willing and able DBE population that exists today.
- B. Use of the most refined data available: The NHDOT relies on the contractor data directly associated to Federal-aid transportation related projects. Any ready, willing and able DBE capable of transportation work and identified using specific NAICS codes or census data would also be included in the data captured using the bidders list and subcontractor approval process listed above. Any firm (DBE or non-DBE) not identified as submitting a bid or being approved for work on a Federal-aid project would be considered by their exclusion, as being not ready, willing and able and therefore, should not be included in the calculations for the DBE goal.
- C. Use of the DBE Directory: The NHDOT does not use the DBE Directory and census data for DBE goal setting purposes. The Department is very proactive in its efforts to identify prospective transportation related DBE firms, however, will only include a DBE firm in its calculations after it has demonstrated, by bid submission or approval as a subcontractor on a Federal-aid project, that the firm is a ready, willing and able DBE.
- D. Local market area: The NHDOT considers the entire state to be the Local Market Area. Prime and subcontractors have demonstrated their ability to travel throughout state boundaries to perform transportation related work. The NHDOT has awarded forty one (41) transportation related construction contracts in year 2013. Twenty nine (29) contracts (71%) have been awarded to NH based firms and twelve (12) contracts (29%) have been awarded to firms from the neighboring states of Maine, Massachusetts and Vermont. This confirms the NH FHWA-assisted contracting market also extends beyond the borders of the state, and contractors routinely cross state boundaries to bid on and perform transportation related work in New Hampshire. These contractors have been included in the calculation of the base figure if they have been identified as submitting a bid or quote.
- E. Ensuring DBE goal percentage reflects “apples to apples” calculations: The DBE goal calculation was derived using the same transportation related items of work in both the numerator and denominator, included all DBE and non-DBE prime contractors and subcontractors that submitted a bid or quote or were approved as a

subcontractor or material supplier and, regardless of whether or not they were actually awarded the contract or subcontract.

F. The use of weighting: The NHDOT disaggregated data by work category and availability on spending in those categories and determined not to apply weighting to adjust its Step One goal figure. The following information assisted in making this determination.

- a. In calendar 2013, the State of NH awarded approximately \$161 million dollars in transportation related contracts. Five (5) contracts valued at \$25 million dollars (16%) were awarded to three (3) prime contractors that specialize in bridge construction. Eleven (11) contracts valued at \$56 million dollars (37%) were awarded to four (4) prime contractors whose primary operations include paving work. The scope of services required for each NHDOT contract may include a variety of different categories of transportation related work. An analysis of all work categories on contracts awarded during calendar year 2013 failed to identify specific work categories with the consistency, dollar volume and DBE participation suitable for weighting.
- b. Eighteen (18) DBE subcontractors perform transportation related work in fifteen (15) primary work categories. These include general and specialty paving, directional drilling, sheer connectors, traffic control, stone work, painting, concrete cutting, pavement marking, concrete products, bridge membrane, electrical, drainage, traffic management systems and guardrail. A detailed analysis of subcontracting work available to be performed by DBEs was done. Although DBEs provide a wide range of services to prime contractors, none of the available DBE work categories provided the consistency and dollar volume necessary to incorporate the use of weighting in the DBE goal calculations.

G. Effects of decertification: Two (2) DBE firms have been decertified by NHDOT. Both decertifications became effective in early 2013 and their impact on DBE goal attainment for the year was minimal. Both firms are currently active, have submitted a bid or quote, and have been included in the denominator of the goal calculation. The dollar volume attributed to these firms in calendar year 2013 was minimal; therefore, no adjustment to the DBE goal based on their decertification is warranted.

H. Changes in the amount of Federal-aid: No adjustments to the DBE goal will be made based on changes in the amount of Federal-aid received.

## **STEP 2: ADJUSTMENT TO BASE FIGURE**

Step Two of the goal setting calculation process is used to determine if any adjustments are necessary to further refine the Step One base figure. The following factors were taken into consideration when contemplating making any Step Two adjustments.

- A. Past participation: The NHDOT DBE program is administered in compliance with regulations set forth in 49 CFR 26, therefore, using past participation to adjust the base figure would be appropriate if the adjustment would result in a more precise DBE goal.

The past participation figures below are from NHDOT Federal-aid projects with similar work opportunities and characteristics of future projects to be advertised and awarded. The following DBE participation figures represent actual payments on contracts completed annually, as reported in the FHWA Uniform Report of DBE Commitments/Awards and Payments.

Past Participation of DBEs:	2012	8.62 %
	2009	7.94 %
	2011	6.39 % (median)
	2013	5.95 %
	2010	4.57 %

Based on this information, the NHDOT has elected to make a step 2 goal adjustment to the base figure. The calculation for this adjustment is shown below.

$$(\text{base figure} + \text{median past participation divided by 2}) 4.86 + 6.39 = 11.25 / 2 = \mathbf{5.63\%}$$

## **OTHER CONSIDERATIONS FOR STEP 2 GOAL ADJUSTMENTS**

1. Additional sources of information: Additional Step Two adjustments may be considered to counter any past effects of discrimination. However, the NHDOT has maintained a race and gender-neutral DBE program and has not evidenced any reports of discrimination in the award of subcontracts, availability of insurance, bonding or any other business related complaints resulting from discriminatory practices. The Department has ongoing dialog with DBEs, state and local agencies with ties to minority and women's groups, and has not discovered any examples of discrimination that may warrant a Step Two adjustment to rectify a particular problem.
2. Evidence from a disparity study: The NHDOT has not commissioned or conducted a disparity study. The Department contacted a variety of state and municipal agencies, including Administrative Services, Health and Human Services, and consulted with local minority groups, Regional Planning Commissions to determine if any relevant disparity studies have been conducted in the local market area in the past few years, with no positive results. No relevant disparity studies or similar analyses have been found that may provide information relative to discrimination in the local market area by the NHDOT or similar contracting agencies.
3. Local market area firm characteristics: The NHDOT is always in search of new transportation related potential DBE firms with characteristics that would benefit the

transportation field and increase the offerings of DBE related firms. At this time, there is no evidence that an adjustment of this type is necessary.

4. Other relevant data: There has been no other data that suggests additional Step Two adjustments are warranted. There have not been and are no impending decertification's of DBE firms responsible for the overwhelming majority of past participation. The State of New Hampshire Office of Attorney General has no record of suits involving discrimination of minority or women owned businesses. Current DBEs have not expressed any concern with the availability of work and awarding of subcontracts.

#### **BREAKOUT OF ESTIMATED RACE AND GENDER-NEUTRAL AND RACE AND GENDER-CONSCIOUS PARTICIPATION**

The NHDOT has established a statewide DBE goal of 5.63%. The NHDOT intends to attain this goal through race and gender-neutral DBE participation. The NHDOT has successfully administered a primarily race and gender-neutral DBE program, consistently exceeding DBE goals in previous years.

The NHDOT continues to work with prime contractors to assist their efforts to facilitate race and gender-neutral DBE participation. Race and gender-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE contract goal, or even if there is a DBE contract goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g. a prime contractor that uses a strict low bid system to award subcontracts).

Race and gender-neutral means include, but are not limited to, the following:

1. Carrying out information and communication programs on contracting procedures and specific contract opportunities, such as ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;
2. Providing a copy of the Invitation For Bids, when requested to NHDOT-certified DBE's for each bid letting;
3. Providing introductions to help DBEs, and other small businesses with access to prime contractors in an effort to develop working relationships
4. Ensuring distribution of NHDOT's DBE Directory, through print and electronic means, to potential prime contractors and subcontractors;
5. Providing technical assistance and other services;

6. The Office of Federal Compliance works with prime contractors (by phone, e-mail, and in person) that take out sample proposals for upcoming NHDOT projects, to search for DBEs capable of subcontracting on the project. We identify potential items of work with subcontracting opportunities and contact DBEs capable of performing this work and encourage them to submit a bid to the prime. In this manner, our office is able to proactively incorporate DBEs into the initial proposal stage for the project.

Each time NHDOT submits its overall goal for review and approval by the US DOT, NHDOT will also submit the portion of the overall goal that is expected to be attained through race and gender-conscious means and the basis for that position.

The NHDOT assesses the percent of DBE participation on a quarterly basis. If it is determined the 5.63 % overall DBE goal will not be achieved, NHDOT may place contract goals on future projects as a race and gender-conscious means of meeting any portion of the overall goal not achieved by use of race and gender-neutral means.

The NHDOT may elect to place specific contract goals on selected large-scale projects, if failure of the selected projects to attain the overall statewide DBE goal would have a disproportionate weight and affect the state's ability to meet its overall race and gender-neutral DBE goal.

The following provisions apply to the use of race-conscious contract goals:

1. NHDOT will use contract goals only on those federally assisted projects that have subcontracting possibilities.
2. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by NHDOT's overall goal, NHDOT will set contract goals so that they will cumulatively result in meeting any portion of NHDOT's overall goal not obtainable through the use of race and gender-neutral means.
3. Contract goals will provide for participation by all certified DBEs and not be subdivided into group-specific contract goals.

To ensure that NHDOT's DBE Program continues to be narrowly tailored to overcome the effects of discrimination, use of contract goals will be adjusted as follows:

1. If NHDOT concludes that it can meet its overall goal through race and gender-neutral means, contracting goals will not be used.

2. If, during the course of any year in which NHDOT uses contract goals, NHDOT determines that the overall goal will be exceeded, NHDOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the overall use of contract goals does not result in exceeding the overall goal.

To ensure that prime contractors demonstrate good faith efforts necessary to fulfill contract goals (race and gender-conscious measures) assigned to Federally-assisted projects, they will be required to incorporate the following measures pursuant to the bidding process:

1. Offering Assistance. The prime contractor may offer assistance to DBEs and small businesses in the areas of interpreting plans, preparing proposals, providing advice to obtain bonding and insurance, etc. Any assistance requested or provided shall be documented.
2. Discussions with Small Businesses. The prime contractor shall respond to all requests from DBEs and small businesses that are submitting quotes including, but not limited to: quantities, expected overtime, project scheduling, pit information, method of measurement, payment schedule, items of work included in the quote.
3. Accepting and Evaluating All Bids Offered. Prime contractors, DBEs and small businesses shall accept and evaluate all bids offered, regardless of work elements intended to be subcontracted. DBEs and small businesses should not be limited to smaller subcontracts because a larger amount of work is intended to be subcontracted to a larger business.
4. Specific DBE Goal Reporting Requirements. For race and gender-conscious projects with a specific DBE goal, the prime contractor submitting the apparent low bid must submit a DBE Commitment Form within three (3) business days of bid award. The DBE Commitment Form must indicate the total dollar value of DBE commitments. This form is provided by the Office of Federal Compliance and includes the following; name and address of the each DBE to be used, items numbers and descriptions of the work to be completed by each DBE, the estimated dollar value of each participating DBE and the total DBE commitment in dollars and expressed as a percentage of the total contract. Additionally, the prime contractor must submit a Letter of Intent for each DBE listed on the DBE Commitment form. The letter of intent confirms the information submitted on the DBE commitment form and is signed by both the prime contractor and each DBE firm.

### **Public Participation**

The NHDOT works cooperatively to promote DBE program participation with transportation related contractors and associations, women and minority groups, and appropriate state and local agencies. The intent of these ongoing conversations is to inform, educate and involve contractors, minority and women's groups and other concerned interests in the DBE program. This open dialogue has resulted in the

successful implementation of a race and gender neutral DBE program goal, and an environment where DBE's can fairly compete for work on transportation related projects.

The NHDOT has disseminated the proposed DBE goal and methodology in writing, via email, telephone and in person at public contractor compliance training sessions. Communications were sent to a diverse range of individuals and organizations, including currently certified DBEs, DBE and non-DBE prime and subcontractors, consultants, the NH Association of General Contractors, NH Procurement Technical Assistance Program, NH Small Business Administration, NH Small Business Development Center, NH Chapter of NAACP in Portsmouth, Manchester and Nashua, NH Chapter of the National Association of Women in Construction, NH Regional Planning Commissions, various towns and municipalities.

Information and feedback from these individuals and organizations, received in person and via telephone, included suggestions to enhance and provide for additional DBE utilization, and shall be incorporated into future NHDOT outreach efforts. No information or comments were received that would indicate additional consideration should be made to ensure non-discrimination and opportunities for DBEs seeking work on transportation related federal-aid projects

The proposed DBE goal and methodology was published on the NHDOT website on June 16, 2014. No minority focused or trade association media was available or suitable for publication of the DBE goal. Historically, public notices placed in the only statewide newspaper have not generated any comments or feedback, therefore, the NHDOT placed more emphasis on targeted dissemination of the goal directly to the DBE population, contractors, and others with an interest in the DBE program. This was done in an effort to engage the affected population and solicit constructive feedback. Following a review of program requirements, the proposed overall goal will be published in the only statewide newspaper on Sunday, August 3, 2014.

### **Goal Monitoring**

The NHDOT will continue to monitor DBE participation by requesting quarterly reports of payments made from prime and subcontractors to DBEs to gauge participation on active federally assisted projects. If the rate of participation indicates that the NHDOT will not attain or exceed its race and gender-neutral DBE goal at any time during the 3-year cycle, the NHDOT will increase proactive efforts to increase DBE participation. If additional efforts at DBE involvement are unsuccessful, the NHDOT may implement specific project goals as a race and gender-conscious measure to reach its overall statewide goal. NHDOT will continue to monitor attainment of the overall goal and the contract goals to determine whether the intent of project goals has been met and will make a determination whether the project goals need to be continued. In any year in which NHDOT meets part of the goal through race and gender-neutral means and the remainder through contract goals, NHDOT will maintain data separately on DBE payments in those contracts with and without contract goals, respectively. NHDOT will report this data to DOT as provided in 49 CFR § 26.11.

